IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 19 OF 1992.

The State of Maharashtra. ..Appellant.
vs.
Vijay Pandurang Pawar. ..Respondent.

Shri A.S. Shitole, A.P.P. for the State.

Ms. Revati Mohite Dere with Sangeeta Chaudhary for the respondent.

CORAM : V.M. KANADE,J.
DATE : 20.1.2005.

ORAL JUDGMENT:

1. The State has filed this appeal challenging the judgment and order passed by the Additional Sessions Judge, Pune, in Sessions Case No. 76 of 1991. By the said judgment and order dated 29.8.1991, the Additional Sessions Judge, Pune, was pleased to acquit the accused- appellant herein of the offences punishable under sections 306 and 498-A of the Indian Penal Code.

2. The prosecution case in brief is that deceased Sushma married the appellant-accused on 22.3.1990 at Pune. The appellant-accused was a resident of Jategaon and after marriage Sushma went to reside with her husband at their house at Jategaon. The prosecution case is that at the time of marriage, the appellant- accused was working in Bharat Forge Co.

Prosecution case is that 2 months after marriage, Sushma informed her parents that her husband used to suspect her fidelity and used to beat and assault her. Prosecution case further is that thereafter parents of the deceased Sushma went to the house of the accused and informed about the ill-treatment by the accused to his father and uncle. Thereafter, according to the prosecution, accused and Sushma started residing at the house of parents of Sushma at Swargate, Pune. Thereafter, the appellant rented a room at Vadgaon Sheri and appellant and Sushma started residing there. Prosecution case is that the appellant continued to suspect his wife's fidelity and used to beat her. Prosecution case further is that on 15.9.1990 at about 8.30 to 9.00 p.m. there was a quarrel between the husband and wife, as usual, appellant-accused was alleging that Sushma had illicit relation with others. Thereafter, at about 11 p.m., being sick and tired due to the constant harassment, Sushma poured kerosene on her person and set herself on fire. After hearing cries of Sushma, her neighbour Vithabai went to her house, called the landlord who, along with appellant-accused took Sushma to the hospital in a rickshaw. Statement of Sushma was recorded and she expired on the same day at about 4.20 a.m. A complaint was lodged by Yervada Police Station and an offence was registered under section 306 and 498-A of the Indian Penal Code. Accused was arrested and

charge-sheet was filed against him. Charge was framed against the accused. He pleaded not guilty to the said charge. The prosecution examined 8 witnesses. The trial Court after appreciating the evidence on record came to the conclusion that the prosecution had failed to prove the offence against the accused beyond reasonable doubt and acquitted the accused of the offences with which he was charged.

3. I have heard learned A.P.P. for the State and learned Counsel appearing on behalf of the respondent-accused. The learned A.P.P. has taken me through the judgment and order of the trial Court and also oral evidence of the witnesses examined by the prosecution. Learned A.P.P. submits that the deceased Sushma had made a statement before her death in which she has stated that she had committed the said act on account of her harassment by her husband. He submitted that the said dying declaration ought to have been relied upon by the trial Court. He has submitted that statements of other witnesses corroborated the dying declaration. He submitted that witnesses examined by the prosecution corroborated the story of ill-treatment and harassment by the accused to the deceased. He submited that all these witnesses had stated that the accused used to suspect her character and used to beat her. He further submitted that the trial Court had erred in discarding the dying

declaration. He submitted that P.W.5- Jayant Khomane was Special Judicial Magistrare, in whose presence dying declaration was recorded. This witness has stated that at the time of recording the dying declaration, doctor was present and his endorsement was obtained on the dying declaration. He submitted that doctor was examined by the prosecution. He also submitted that the Doctor had made an endorsement on the said dying declaration in his own handwriting. Learned A.P.P. further submitted that the accused was subjecting his wife-Sushma to cruelty and because of the said conduct of the accused, his wife had no other option but to commit suicide. He submitted that since Sushma died within 6 months from the date of her marriage, presumption was required to be drawn under section 113-A of the Indian Evidence Act.

4. Learned Counsel appearing for the respondent-accused submitted that present appeal was filed by the State against the order passed by the Additional Sessions Judge, Pune, on 29.8.1991. She submitted that this is an appeal against acquittal and the High Court while exercising its jurisdiction under section 378 of the Criminal Procedure Code should not substitute its own view for the view taken by the trial Court. She submitted that the view taken by the trial Court is a plausible and reasonable view, hence, there is no reason to interfere with the said judgment

and order of the trial Court.

5. Learned Counsel for the respondent-accused further submitted that evidence of P.W. 1 and P.W.2 was liable to be discarded as both of them were interested witnesses. P.W. 1 Vithabai was neighbour of deceased Sushma and she was also working as maid servant of P.W.7- Mahadeo Dhekane. She further submitted that P.W.7- Mahadeo Dhekane was also her landlord and was maternal grant father of the deceased. She submitted that similarly, P.W.2 was also a tenant of P.W.7- Mahadeo Dhekane and in her evidence she has stated that her relations with the deceased were not close and she never visited her house. She further submitted that deceased Sushma did not visit house of P.W.2. It was, therefore, submitted that it was difficult to accept her statement that Sushma had disclosed to this witness her personal problems when their relations were not very cordial. Learned Counsel further submitted that P.W.3- Alkla Tupe was mother of the deceased and she was an interested witness. She further submitted that P.W.3 in her cross-examination had admitted that Sushma was a sensitive girl and that she was not used to hard life in the village. The husband and wife had stayed at Pune for 2 months. She submitted that P.W.3 in her cross-examination had admitted that deceased Sushma was used to city life in the house of her

parents, while she was residing with her husband's family in a meagre income of Rs.10/- to Rs.12/- per day. She submitted that therefore, from the evidence of P.W.3, it can be inferred that Sushma committed suicide for some other reasons and not for the reasons attributed by the prosecution. She therefore, submitted that P.W.7- Mahadeo Dhekane was also an interested witness and the maternal grand father of the deceased and though he had worked in the Police Department for 38 year he had not lodged complaint immediately but had waited for one day before his statement was recorded. She has further stated that in the evidence of the doctor he had drawn an inference that if Sushma had received 100% burn injuries then it was unlikely in that condition to make statements particularly, when sedative was given to her. Learned Counsel submitted that there were certain erasures and alterations in the medical papers relating to the drug which was injected to the deceased. She submitted that from this also inference could be drawn that immediately after admission of deceased in the hospital, she was given a heavy sedative as a result of which it was not possible for her to make any statement. She, therefore, submitted that appeal was liable to be dismissed.

6. In a case where accused is charged for having committed offences punishable under section 498-A read

with section 306 of the Indian Penal Code, the prosecution has to establish beyond reasonable doubt that the accused has, as result of his wilful conduct brought the deceased to the brink of committing suicide and, therefore, abetted the offence under section 306 of the I.P.C. It would be relevant to consider the said two provisions of sections 498-A and 306 of the I.P.C. which read as follows:

> 498-A "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation- For the purposes of this section, 'cruelty' means- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;or
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> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand."
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> 306." If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

From the perusal of section 498-A, it is apparent that in order to constitute the offence under the said provision, it is essential to prove that the accused has treated his wife with cruelty. In the Explanation, the term 'cruelty' has been explained as

any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide and secondly, harassment of a woman with a view to coercing her to meet any unlawful demand for any property or valuable security. In the present case, allegation of the prosecution is that the accused had treated the wife with cruelty within the meaning of section 498-A. After insertion of section 498-A in the I.P.C., Indian Evidence Act also came to be amended and section 113-A was inserted by Act 46 of 1983. The said provision reads as under:

> " When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
>
> Explanation- For the purposes of this section, 'cruelty' shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860)

As a result of the said insertion of section 113-A, presumption is raised against the husband or any relative if it is proved that the wife has committed suicide within a period of 7 years from the date of her marriage.

8. In the present case, the prosecution has examined 7 witnesses. P.W. 1 and 2 who are neighbours. P.W. 1 has admitted in her cross-examination that she was working as a maid -servant of P.W.7- Mahadeo Dhekane, who was maternal grand father of the deceased. She was also his tenant. P.W. 2 -Clotilda Zakaria is also a tenant of P.W.7-Mahadeo Dhekane. From her evidence, it can be seen that her relations with the deceased were not very close and she was not visiting the premises of the deceased. According to the learned Counsel for the respondent-accused it would not be proper to accept her evidence that Sushma would disclose her private life to her. Further, from the evidence of P.W.1, it can be seen that she had not stated the reason why quarrel had taken place between husband and wife and her statement in her evidence that 15 days prior to the incident another quarrel had taken place between the husband and wife also is an improvement made by her in her examination in chief, which was duly proved by the defence by bringing on record that the said statement was not made before the investigating officer. P.W.3- Alka Tupe is the mother of the deceased. She has admitted in her cross-examination that Sushma was a sensitive girl and was not happy with the accused as she was used to city life. Accused was facing financial problems as he had lost his job from Bharat Forge Co. and working as

daily worker earning Rs.10/- to Rs.12/- per day. The dying declaration which is recorded also cannot be relied upon as doctor in his evidence has stated that Sushma has received 100% burns. From the cross-examination of P.W.5- Special Executive Magistrate, it can be seen that he has admitted in his cross-examination that he had not recorded dying declaration in the question and answer form and that no care was taken to ensure that the deceased was not tutored by her relatives. He has admitted in the cross-examination that he did not enquire with the patient whether she was tutored. P.W. 6- Dr.Vinay Takavale in his cross-examination has stated that when patient was admitted in the hospital her condition was critical and he had informed this to P.W.7. He has further admitted that a person who had received 50% to 60% burns is likely to go in shock and may be in the confused state of mind or may go in delirium. Considering the evidence of the doctor P.W.6 and P.W.5, it is not possible to accept the dying declaration.

9. In my view, therefore, the prosecution has not established that the accused had subjected deceased Sushma with cruelty and had harassed her and that as a result of the said wilful conduct on the part of the accused, deceased had committed suicide. I have gone through the judgment and order of the trial Court and

in my view, the finding recorded by the trial Court is neither unreasonable nor perverse. There is no reason to interfere with the said finding recorded by the trial Court.

10. Appeal is accordingly dismissed.